

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ARTIS E. GORHAM, JR.,

CASE NO. 11cv1264 WQH (WVG)

Petitioner,

ORDER

vs.

A. HEDGPETH, Warden,

Respondent.

HAYES, Judge:

The matter before the Court is the Report and Recommendation (ECF No. 9) of the Honorable Magistrate Judge William V. Gallo filed on November 1, 2011.

I. Procedural Background

On June 8, 2011, Petitioner filed his Petition for Writ of Habeas Corpus asserting the following claims: (1) trial counsel failed to advise him of the consequences of pleading guilty; (2) Petitioner did not knowingly waive his constitutional rights before pleading guilty; and (3) the trial court violated his Fifth and Sixth Amendment rights as well as *Blakely v. Washington* 542 U.S. 296 (2004) in imposing the sentence. (ECF No. 1). On September 19, 2011, Respondent filed an Answer. (ECF No. 7). On November 1, 2011, the Magistrate Judge issued a Report and Recommendation (ECF No. 9) recommending that the Petition be denied.

To date, neither party has filed any objections to the Report and Recommendation.

II. Discussion

The duties of the district court in connection with a Report and Recommendation of a

1 Magistrate Judge are set forth in Federal Rule of Civil Procedure 72(b) and 28 U.S.C. §
 2 636(b)(1). When a party objects to a Report and Recommendation, “[a] judge of the [district]
 3 court shall make a de novo determination of those portions of the [Report and
 4 Recommendation] to which objection is made.” 28 U.S.C. § 636(b)(1). When no objections
 5 are filed, the district court need not review the Report and Recommendation de novo. *See*
 6 *Wang v. Masaitis*, 416 F.3d 992, 1000 n.13 (9th Cir. 2005); *U.S. v. Reyna-Tapia*, 328 F.3d
 7 1114, 1121-22 (9th Cir. 2003) (en banc). A district court may “accept, reject, or modify, in
 8 whole or in part, the findings or recommendations made by the magistrate judge.” Fed. R. Civ.
 9 P. 72(b); *see also* 28 U.S.C. § 636(b)(1). Neither party objected to the Magistrate Judge’s
 10 Report and Recommendation in this case. This Court has reviewed the Report and
 11 Recommendation and the record in its entirety.

12 The Magistrate Judge correctly found that “Petitioner has failed to show his attorney’s
 13 representation fell below an objective standard of reasonableness, and he was prejudiced by
 14 his attorney’s errors, if any.” (ECF No. 9 at 7). The Magistrate Judge correctly found that
 15 “Petitioner was adequately informed of his constitutional rights before pleading guilty” *Id.*
 16 at 11. The Magistrate Judge correctly found that “Petitioner fails to state a federal question
 17 in his claim regarding abuse of the court’s discretion because a trial court’s possible abuse of
 18 discretion is not reviewable under § 2254.” *Id.* at 12. The Magistrate Judge correctly found
 19 that Petitioner’s claim for violation of *Blakely v. Washington* fails to state a federal question
 20 ... [and is] meritless.” *Id.* at 13-14. Magistrate Judge correctly concluded that the Petition for
 21 Writ of Habeas Corpus should be denied.

22 **IV. Certificate of Appealability**

23 A certificate of appealability must be obtained by a petitioner in order to pursue an
 24 appeal from a final order in a Section 2254 habeas corpus proceeding. *See* 28 U.S.C. §
 25 2253(c)(1)(A); Fed. R. App. P. 22(b). Pursuant to Rule 11 of the Federal Rules Governing
 26 Section 2254 Cases, “[t]he district court must issue or deny a certificate of appealability when
 27 it enters a final order adverse to the applicant.”

28 A certificate of appealability may issue “only if the applicant has made a substantial

1 showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). It must appear that
2 reasonable jurists could find the district court’s assessment of the petitioner’s constitutional
3 claims debatable or wrong. *See Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). The Court
4 concludes that jurists of reason could not find it debatable whether this Court was correct in
5 denying the Petition. The Court denies a certificate of appealability.

6 **III. Conclusion**

7 IT IS HEREBY ORDERED that the Report and Recommendation (ECF No. 9) is
8 adopted in its entirety. The Petition for Writ of Habeas Corpus is DENIED. The certificate
9 of appealability is DENIED.

10 DATED: March 6, 2012

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12 WILLIAM Q. HAYES
13 United States District Judge

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